Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 96-87

In the Matter of Implementation of Section 273(d)(5) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 -- Dispute Resolution Regarding Equipment Standards	)	GC Docket No. 96-42

Notice of Proposed Rulemaking

Adopted: March 5, 1996; Released: March 5, 1996

Comment Date: **[20 days from Federal Register publication]**
Reply Comment Date: **[30 days from Federal Register publication]**

By the Commission:

I. INTRODUCTION

1. The Telecommunications Act of 1996[1], amended the Communications Act by creating a new section 273, 47 U.S.C. § 273, which sets forth procedures to be followed by non-accredited standards development organizations[2] that set industry-wide[3] standards and requirements for manufacturing

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[1] Pub. L. No. 104-104, 110 Stat. 56 (1996).

[2] As defined in section 273(d)(8)(E),

> [t]he term 'accredited standards development organization' means any entity composed of industry members which has been accredited by an institution vested with the responsibility for standards accreditation by the industry.

47 U.S.C. § 273(d)(8)(E). Thus, for example, Bell Communications Research, Inc. (Bellcore) would not be an accredited standards development organization and is subject to the section 273 procedures. H.R. Conf. Rep. No. 230, 104th Cong., 2d Sess. 39 (1996).

[3] As defined in section 273(d)(8)(C),

> [t]he term 'industry-wide' means activities

telecommunications equipment. The procedures allow interested industry parties to participate in setting industry-wide standards or generic requirements and require the organization and such parties to attempt to develop a dispute resolution process in the event of disputes on technical issues. 47 U.S.C. § 273(d)(4). Section 273(d)(5) requires the Commission to prescribe within 90 days of enactment a dispute resolution process to be used in the event all parties cannot agree to a dispute resolution process. 47 U.S.C. § 273(d)(5). Thus, the Commission's dispute resolution process is triggered only if the parties fail to agree to a process for resolving technical issues on their own. Section 273(d)(5) also requires the Commission to "establish penalties to be assessed for delays caused by referral of frivolous disputes to the dispute resolution process." Id.

2. The purpose of this proceeding is to establish dispute resolution procedures as provided for in section 273(d)(5). In section II(A) below, members of the public are requested to comment on the proposal set forth here and are also encouraged to submit alternative dispute resolution proposals that they believe would better implement this statutory section. Comment is also sought on methods for selecting an arbitrator or neutral and on the issue of whether the Commission should make its employees available for that purpose. In section II(B), we solicit proposals or recommendations concerning the types of penalties that should be assessed for referral of frivolous disputes.

II. PROPOSED REGULATIONS

A. Binding Arbitration Proposal

3. As explained above, section 273(d)(5) directs the Commission to prescribe a dispute resolution process to be used by non-accredited standards development organizations in situations where the parties involved cannot agree on the dispute resolution process to be used. 47 U.S.C. § 273(d)(5). Specifically, section 273(d)(5) provides:

> funded by or performed on behalf of local exchange carriers for use in providing wireline telephone exchange service whose combined total of deployed access lines in the United States constitutes at least 30 percent of all access lines deployed by telecommunications carriers in the United States as of the date of the enactment of the Telecommunications Act of 1996.

47 U.S.C. § 273(d)(8)(C).

> -- [w]ithin 90 days after the date of enactment of the Telecommunications Act of 1996, the Commission shall prescribe a dispute resolution process to be utilized in the event that a dispute resolution process is not agreed upon by all the parties when establishing and publishing any industry-wide standard or industry-wide generic requirement for telecommunications equipment or customer premises equipment, pursuant to paragraph (4)(A)(v). The Commission shall not establish itself as a party to the dispute resolution process. Such dispute resolution process shall permit any funding party to resolve a dispute with the entity conducting the activity that significantly affects such funding party's interests, in an open, nondiscriminatory, and unbiased fashion, within 30 days after the filing of such dispute. Such disputes may be filed within 15 days after the date the funding party receives a response to its comments from the entity conducting the activity. The Commission shall establish penalties to be assessed for delays caused by referral of frivolous disputes to the dispute resolution process.

47 U.S.C. § 273(d)(5). According to the Conference Report, the intended purpose of the Commission's dispute resolution process is to "enable all interested parties to influence the final resolution of the dispute without significantly impairing the efficiency, timeliness, and technical quality of the activity."[4]

4. We propose here to require binding arbitration as the dispute resolution process. Binding arbitration involves the submission of the dispute to a third party or arbiter who renders a decision after hearing arguments and reviewing evidence. The parties to the dispute are bound by this final decision. Because it is less formal and complex than a formal hearing (i.e., procedural and evidentiary rules may be relaxed), arbitration is often less costly and time consuming than other dispute resolution mechanisms. Given the short 30-day period for completing the dispute resolution process, we believe binding arbitration presents the most feasible dispute resolution approach. We also seek comment on whether additional procedures are necessary in the event that the dispute resolution process is not resolved within the allotted 30-day time period.

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[4] H.R. Conf. Rep. No. 230, 104th Cong., 2d Sess. 39 (1996).

permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR Sections 1.1202, 1.1203, and 1.1206(a).

12. As required by section 603 of the Regulatory Flexibility Act of 1980, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals in this document. The IRFA is set forth in the paragraph below. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. P.L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601, et seq. (1980).

13. **Initial Regulatory Flexibility Analysis**

Reason for Action: The Telecommunications Act of 1996 permits a Bell Operating Company, through a separate subsidiary, to engage in the manufacture of telecommunications equipment and customer premises equipment after the Commission authorizes the company to provide in-region interLATA services. As one of the safeguards for the manufacturing process, the Telecommunications Act of 1996 amended the Communications Act by creating a new section 273, which sets forth procedures for a "non-accredited standards development organization," such as Bell Communications Research, Inc., to set industry standards for manufacturing such equipment. The statutory procedures allow outside parties to participate in setting the organization's standards and require the organization and the parties to attempt to develop a process for resolving any technical disputes. Section 273(d)(5) requires the Commission "to prescribe a dispute resolution process" to be used in the event that all parties cannot agree to a mutually satisfactory dispute resolution process. 47 U.S.C. § 273(d)(5). This rulemaking proceeding was initiated to secure comment on our proposal to rely on binding arbitration as this dispute resolution process. The proposals advanced in this Notice are also designed to implement Congress' goal of establishing procedures "to enable all interested parties to influence the final resolution of the dispute without significantly impairing the efficiency, timeliness and technical quality of the activity." H.R. Conf. Rep. No. 230, 104th Cong., 2d Sess. 39 (1996).

Objectives: The Commission proposes a dispute resolution process that requires parties to rely on binding arbitration which appears to be the most feasible option given the 30 day period for completing the dispute resolution process. It also seeks to adopt rules that conform to specific statutory parameters. Section 273(d)(5) directs that the Commission "shall not establish itself as a party to the dispute resolution process," that the process shall permit resolution "in an open, non-discriminatory and unbiased fashion within 30 days after the filing of such dispute" and that the Commission will "establish penalties to be assessed for delays caused by referral of frivolous disputes to the dispute resolution process." 47 U.S.C. § 273(d)(5).

Legal Basis: The proposed action is authorized under the Communications Act, sections 4(i), 4(j), 273(d)(5), 303(r) and 403 of the Communications Act, 47 U.S.C. §§ 154(i) and (j), 273(d)(5), 303(r), and 403.

Reporting, Recordkeeping, and Other Compliance Requirements: The dispute resolution requirement contained in this *Notice*, if adopted, will require parties to use binding arbitration in the event that all parties cannot agree to a dispute resolution process. No reporting or recordkeeping requirements are proposed in this *Notice*.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules: None

Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives: This *Notice* solicits comments on a variety of alternatives. Any additional significant alternatives presented in the comments will also be considered.

IRFA Comments: We request written comments on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the comment deadlines set forth in this *Notice*.

14. Authority to conduct this inquiry is given in sections 4(i), 4(j), 273(d)(5), 303(r) and 403 of the Communications Act, 47 U.S.C. §§ 154(i) and (j), 273(d)(5), 303(r) and 403.

15. Further information on this proceeding may be obtained by contacting Sharon B. Kelley, Office of the General Counsel, 202/418-1720.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary